



Judgment

wp281.25

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION Nos. 280, 281 & 285 OF 2025.

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CRIMINAL WRIT PETITION No. 280 OF 2025.

Roshan s/o Madhukar Dehankar,
Aged about 30 years, Occupation -
Private, resident of Old Colony,
Jaitala Colony, P.S. MIDC, Nagpur. ... **PETITIONER.**

VERSUS

1.State of Maharashtra,
through Deputy Commissioner of Police,
Zone-I, Trimurti Nagar, Near NIT
Garden, above Pratap Nagar Police
Station, Nagpur.

2.Assistant Commissioner of Police,
Civil Lines, Nagpur. ... **RESPONDENTS.**

WITH

CRIMINAL WRIT PETITION No. 281 OF 2025.

Sudhir s/o Ravindra Dongre,
Aged about 33 years, Occupation -

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Private, resident of Jaitala old Colony,
Near Mauli Mata Mandir, Jaitala,
Nagpur.

... PETITIONER.

VERSUS

1.State of Maharashtra,
through Deputy Commissioner of Police,
Zone-I, Trimurti Nagar, Near NIT
Garden, above Pratap Nagar Police
Station, Nagpur.

2.Assistant Commissioner of Police,
Civil Lines, Nagpur.

... RESPONDENTS.

WITH

CRIMINAL WRIT PETITION No. 285 OF 2025.

Swapnil s/o Wamanrao Dhole,
Aged about 30 years, Occupation -
Private, resident of Jaitala,
Near Corporation School, Nagpur.

... PETITIONER.

VERSUS

1.State of Maharashtra,
through Deputy Commissioner of Police,
Zone-I, Trimurti Nagar, Near NIT
Garden, above Pratap Nagar Police
Station, Nagpur.

2.Assistant Commissioner of Police,
Civil Lines, Nagpur.

... RESPONDENTS.

Mr. S.P. Deshpande, Advocate for Petitioners.
Mr. S.S. Hulke and Mr. K.R. Lule, A.P.Ps. for Respondents.

CORAM : **ANIL S. KILOR AND**
 VRUSHALI V. JOSHI, JJ.

DATE : **JULY 01, 2025.**

ORAL JUDGMENT (PER ANIL S. KILOR, J.) :

Heard. Rule. Rule is made returnable forthwith and by consent of learned Counsel appearing for the parties, the matters are taken up for final disposal.

2. In all these matters order dated 28.11.2024 passed by the respondent no.2 is under challenge. The impugned order purportedly passed under Section 55 of the Maharashtra Police Act, 1951 (hereinafter referred to as “the 1951 Act” for short).

3. By the impugned order, the petitioners have been

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externed for a period of two years from the locality of Nagpur city and District. The common argument in all the three petitions made by the learned Counsel for the petitioners is that, since there are 9 members in the gang, and the offence on which the respondents have relied upon to extern them, in none of such offences there is collective participation of all the members of the gang, including the gang leader.

4. It is submitted that to constitute a gang, participation of all the members and the leader, or at least participation of substantial number of members collectively is required. In absence of any such evidence to show that there is collective participation of all the members or at least substantive member of the gang in the offence, the impugned order of externment vitiates.

5. To buttress his arguments, the learned Counsel has placed reliance upon the judgment of the Coordinate Bench of this Court in case of **Altaf Rajekhan Pathan and others .vrs. Divisional Commissioner, Pune and others** reported in 2018 SCC Online

Bom.1475.

6. The learned A.P.Ps, appearing for the respondents on the other hand straneously oppose the above submission and submit that since there is sufficient material to constitute a gang, and to attract Section 55 of the 1951 Act, this Court may not interfere with the impugned order.

7. In the light of rival contentions, we have perused the record. Before advertng to the facts of the case, it would be beneficial to refer the law as regards the prerequisite to constitute a gang, for the purpose of externment under Section 55. The Coordinate Bench of this Court in Altaf Rajekhan Pathan [supra], in paragraph nos. 35 and 36 has held as under :

“35. Now coming to the judgment of the Division Bench of this Court Ahammad Maniuddin Shaikh’s case [supra]. In the said case the facts were that the offences were registered against the gang leader and one member of the gang and no offence were registered collectively against all the gang members. It is in the said context that the Division Bench held that the Petitioner in the said Petition

and the other members did not constitute a gang as there is no collective participation by the gang leader and the alleged members. The said judgment is holding the field since the year 2013. A similar note was sounded by the Division Bench in Vijay Lalso Jadhav's case [supra].

36. *The facts in the case of Ahammad Mainuddin Shaikh [supra] can be said to be identical to the facts in the instant cases, as in the instant case also the offence under the gambling act have been individually registered against the gang leader and one member as can be seen from the show cause notices which are issued to the petitioners in all the above Writ Petitions. There is no offence registered against all the gang members collectively or even against a substantial number of the members collectively so as to constitute a gang. In our view, therefore, the Petitioners in all the above Writ Petitions can hardly be said to constitute a gang so as to entitle the authorities to invoke the provisions of Section 55 of the Police Act. Hence, it would have to be held that there is an absence of the essential jurisdictional fact of there being a gang, so as to entitle the authorities to exercise powers under Section 55 of the police act. In our view, since the externment order impinges upon the personal liberty of an individual the provisions have to be strictly construed and by a convoluted process the provisions cannot be made applicable.”*

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8. In the wake of above referred observations we revert back to the facts of the present case. In the present case, there is one common offence against all the three petitioners i.e. Crime No.125/2022 registered under Section 324 read with Section 34 of the Indian Penal Code. Against petitioner Swapnil Dhore, the authorities have relied on three offences, where as against the petitioner Roshan Dehankar, the authorities have relied upon two offences. As far as the petitioner Sudhir Dongre is concerned, the authorities have relied upon five offences.

9. As we have found that one offence is common against all the three petitioners i.e. crime no.125/2022. There are total 9 members in the gang and if there is no offence showing that there is collective participation of all the members, or by substantive number of members, the authority will not get jurisdiction under Section 55 of the 1951 Act. Three members out of total nine cannot be considered as substantive number to constitute a gang.

10. In the impugned order there is no mention of any offence

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either to show that there is collective participation of the members of the gang or the collective participation of substantive number of members of the gang. In that view of the matter, the law laid down in the case of Altaf Pathan [supra], clearly applies to the present case.

11. It is pertinent to note that this Court while considering the case of **Sachin Rambabu Mahato .vrs. State of Maharashtra and another (Criminal Writ Petition No.1027/2024 decided on 12.02.2025)**, who has also been externed by the impugned order, has quashed and set aside the order of externment on the similar ground.

12. As we have observed herein above, that there is no material to fulfill the prerequisite to constitute a gang as required by Section 55 of the 1951 Act, the respondent no.2 does not get jurisdiction to exercise powers under Section 55 of the 1951 Act to extern the petitioners. Thus, the impugned order vitiates for the above reason.

13. Accordingly, Criminal Writ Petitions are allowed, the

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order passed by the respondent no.1 Deputy Commissioner of Police, Zone-1, Nagpur dated 28.11.2024 extenuating the petitioners, is hereby quashed and set aside.

14. Rule is made absolute in aforesaid terms.

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